

**REMARKS**

The present amendment is responsive to the Office Action dated March 24, 2010. A one-month extension of time extending the period of reply from June 24, 2010 up to and including Monday, July 26, 2010 is submitted herewith.

Claims 1, 4-7, and 9-11 are pending in the application. Independent claim 1 is amended herein. No claims are cancelled or added herein. Therefore, claims 1, 4-7, and 9-11 remain pending in the present application. Support for independent claim 1 can be found in at least paragraphs [00119]-[00120] of the originally filed disclosure. No new matter has been added. Applicants set forth remarks relating to the Action below.

Applicants thank the Examiner for discussing the present Action in a telephone interview with Applicants' undersigned attorney on June 3, 2010. During the interview, independent claim 1 was discussed in view of U.S. Pat. Pub. No. 2004/0220582 to Keller ("Keller").

In the Action, the Examiner rejected claims 1, 5-7, and 9-11 under 35 U.S.C. § 102(e) as being anticipated by Keller, and claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Keller.

Applicants would like to point the Examiner to paragraphs [00119]-[00120] of the originally filed disclosure stating the following:

[0119] It should be noted that preferably, when the static trial 100 is held by the inserter/impactor 400, the flat surfaces 120 a-c and the counterpart flat surfaces 120 d-f are tightly held against the angled flat surfaces 420 a-c of the inserter/impactor 400 as described above. It is also preferable that the baseplates 108 a-b of each of the plurality of static trials 100 be appropriately lordotically angled relative to one another to ease insertion of the static trial 100 into the intervertebral space and to mimic how the artificial intervertebral disc 160 will

typically be oriented as it is being inserted using the inserter/impactor 400, and to ease insertion of the static trial 100 into the intervertebral space. While not shown in FIGS. 1 a-f, in some embodiments, when the static trials 100 are formed in such a lordotically oriented configuration, it is preferable that the flat surfaces 120 d-f on the first (e.g., upper) baseplate 108 a be parallel to the flat surfaces 120 a-c of the second (e.g., lower) baseplate 108b in the static trial's 100 appropriately lordotically oriented configuration, so that when the static trial 100 is held tightly by the inserter/impactor 400, the flat surfaces 120 a-f are flush with the flat surfaces 420 a-c of the inserter/impactor 400 even though the baseplates 108 a-b are lordotically angled with respect to one another.

[0120] By contrast, preferably, when the artificial intervertebral disc 160 is held by the inserter/impactor 400, the flat surfaces 180 a-c are tightly held against the angled flat surfaces 420 a-c of the inserter/impactor 400 as described above, but the counterpart flat surfaces 180 d-f are loosely held against the angled flat surfaces 420 a-c of the inserter/impactor 400. As such, the structure of the artificial intervertebral disc 160 having the counterpart flat surfaces 180 d-f (e.g., the upper baseplate 168a) is able to angulate and rotate to a limited extent relative to the structure of the artificial intervertebral disc 160 having the flat surfaces 180 a-c. This permits the artificial intervertebral disc 160 to adjust to the intervertebral space (e.g., to the angulation of the adjacent vertebral endplates, defining the intervertebral space, relative to one another) as it is being inserted thereinto. That is, typically, the adjacent vertebral endplates will be lordotically angled with respect to one another as a result of the intervertebral space being prepared and distracted. As the artificial intervertebral disc 160 is then inserted into the intervertebral space using the inserter/impactor 400, then, the baseplates 168 a-b will be permitted to lordotically angle with respect to one another to squeeze into the intervertebral space.

As described in the reproduced paragraphs of the present application above, inserter/impactor 400 has angled flat surfaces 420a-c configured to engaged flat surfaces 180a-c of lower baseplate 168b and flat surfaces 180d-f of upper baseplate 168a. When angled flat surfaces 420a-c of inserter/impactor 400 are held against baseplates 168a,b, the flat surfaces 180d-f of upper baseplate 168a are loosely held against the angled flat surfaces 420a-c of inserter/impactor 400. This allows upper baseplate 168a to a limited extent to rotate and angulate with respect to lower baseplate 168b such that the upper baseplate 168a may be lordotically angled with respect to the lower baseplate 168b as artificial intervertebral disc 160 is inserted into an intervertebral disc space.

Keller teaches an instrument 51 having prosthesis holders 52 to hold respective baseplates 53 apart from one another. The baseplates 53 are held by prosthesis holders 52 such that baseplates 53 cannot rotate and angulate with respect to one another when baseplates 53 are engaged to the prosthesis holders 52 of instrument 51. Therefore, Keller cannot be used to anticipate amended claim 1. Applicants respectfully submit amended claim 1 is in condition for allowance. Claims 4-7 and 9-11 are also in condition for allowance, *inter alia*, their dependence from an unanticipated base claims. A dependent claim is necessarily narrower than the claims from which it depends.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney

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at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: July 26, 2010

Respectfully submitted,  
Electronic signature: /William  
A. Di Bianca/  
William A. Di Bianca  
Registration No.: 58,653  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicants

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